

The Appellants C A S E.

From a Decree in Chancery made the 17th of November last, Whereby an Award made between the Parties is set aside.

22 June, 1688. **T**hat by Articles of Marriage between the Appellant and his late Wife; it was agreed that her Estate (except some Leasehold houses) should notwithstanding the Intended Marriage be at her own Dispose by Deed or Will.

That the Appellant being a Member of the Church of England, and his Wife and her Trustees *Anabaptists*, several differences did arise, and as he conceived were occasioned by some of the *Anabaptists*, and particularly by the Respondent *Burroughs*.

31 July, 1691. That afterwards by mediation of Friends they came to a second agreement, that the Appellant and his Wife respectively might live and cohabit together, or seperate at each of their Wills and Pleasures; and for her disposal of her Estate as she thought fit.

6 Oct. 1699. The Appellant's said late Wife being very ill of a spotted Fever, whereof she after dyed, a Will was pretended to be made by her (when in truth she was *non Compos*) whereby it was pretended she gave 100 *l.* Legacy to one *William Taylor* her Sister's Son, and next of kin, and after some other small Legacies (as was pretended) gave the Residue of her Estate to the Respondents, who were named Executors in the said pretended Will, but no ways related to her. And upon her death the Respondents under colour of the pretended Will possess'd themselves of her Estate (when the Appellant was in the Country, and had no notice of her death) and privately and by surprize proved the Will in common Form in the consistory Court of the Lord Bishop of *London*.

That the Appellant so soon as he had notice thereof, call'd in question the validity of the said Will, and several Witnesses were thereupon examined, and the Cause heard before Dr *Newton* the proper Judge thereof, and upon a full hearing, Sentence was pronounced and given against the said pretended Will, as ill obtained, and when the Appellant's said Wife was not *Compos Mentis*, and Administration of her Estate was granted to the Appellant.

That the Respondents (tho they had 4 Council at the hearing) appealed from the said Sentence, and afterwards proposed a Reference, and employed several persons to perswade the Appellant to name Dr *Oates* for a Referee, which the Appellant objected to, for that the said Doctor was the Teacher of the Congregation, whereof the Respondent *Burroughs* was an elder or Deacon, but proposed Dr *Oldish* the Respondent's Advocate to be sole Referee, which being refused by the Respondent *Burroughs*, and he insisting to have Dr *Oates* the Referee, at last by the perswasions of the Respondent and his Attorney and Agents, the Appellant consented thereunto.

That the Respondent's Attorney drew Bonds of Arbitration of 4000 *l.* penalty, which were Executed at the Respondent *Reynold's* house the next day, conditioned to perform the Doctor's award.

26 Dec. 1700. That Dr *Oates* took upon him the Arbitration, and appointed sever al days to hear the Parties and their Witnesses, and having so done on the 26th of *December* 1700 made his Award, thereby confirming the Sentence against the pretended Will, and Awarded the Appellant the Leasehold Estate, and 1500 *l.* in lieu of the residue of the Appellant's Wifes Estate and mutual Release to be executed.

That the Respondents to tire out the Appellant having got the Money in their hands, exhibited their Bill into the Court of Chancery, to set aside the said Award, to which Bill the Appellant and Dr *Oates* put in their several Answers, and Witnesses were examined on both sides.

17 Nov. 1702. The Cause was heard before the Right Honourable the Lord Keeper, who Decreed the Award to be set aside, as not fairly made and obtained, from which Decree this Appeal is brought.

1 Obj. That the said Award was not fairly obtained.

Resp. The Appellant insists that the said Award was fairly obtained, the Respondents not making appear any indirect Practices upon the Appellant, tho the Appellant hopes he hath fully proved the Respondent *Burroughs*, and *Joseph Jackson* (a principal Witness for the Respondents,) and other the Respondent's Friends and Relations endeavoured by *Evil Practices* to obtain an Award in their favour (*viz.*) by offering the Doctor great Rewards, and Solliciting him for the Honour of God, for the sake of the Gospel, and for the sake and interest of the *Anabaptists*.

2 Obj. It was objected that the Doctor had expressed himself prejudiced against the Respondent.

Resp. 1. The expressions (if any) were spoken nine weeks before the Reference, and unknown to the Appellant; and *Pope* the Respondent's Witness and intimate Friend, that pretends to prove the same was present when the Doctor was proposed for the Referee, and was also a Witness to the bonds of Arbitration.

2. The Appellant ought not to suffer by any precedent misunderstanding between the Doctor and the Respondents, especially since the Doctor was an Arbitrator of their own choosing, for if that should be so, then the Award must be bad for the Appellant, but if made in favour of the Respondents, must be good for them, which shews the unreasonableness of this Objection.

3 Obj. That the Doctor behaved himself partially to the Respondents, and did not fully hear all their Witnesses, and very much discouraged them.

Resp. 1. It is proved that Dr *Oates* fully heard all the Respondents Witnesses taking up several days for that purpose, that at the conclusion of each day of hearing them, the Respondents thanked the Doctor, and declared he had behaved himself fairly and impartially.

2. During the time of the Examination and a fortnight after, and until the Award was made, there was no complaint of any partiality in the Doctor, or not hearing the Witnesses.

4 Obj. The money awarded exceeds the Estate, which is alledged not to be above 1100 *l.* and the Doctor hath awarded 1500 *l.* besides the houses.

Ans. 1. The Respondents may have much more in their hands than what is awarded; and the Arbitrator was of that opinion, and therefore awarded the Appellant to release the Respondents on payment of 1500 *l.*

2. 'Tis plain in proof, that the Wife's Estate was on the marriage of the Appellant between 5 and 6000 *l.* That the Appellant lived but a little while with her, and had but 800 *l.* thereof, and a few small Houses of the value of 400 *l.* And that during the seperation she liv'd very sparingly and increased her Estate. That a little before her death she often declared she wou'd make one *Hannah Mereton* a young Girl, and her near Relation, who dy'd just before her worth between 3 and 4000 *l.* And that the Respondent *Burroughs* had several hundreds of pounds of hers in his hands, And the Respondents privately possessed themselves of all at her Death.

3. That in *May* before her Death, she shewed 2 Bonds under the Respondent *Burroughs* his hand, one for payment of 1500 *l.* and another for payment of 500 *l.* and a Note for payment of 500 *l.* more, and about a month or less before her Death she again shewed the same Bonds. That the Doctor having declared to the Respondent *Burroughs* his dissatisfaction as to the Inventory, in regard those two Bonds were omitted, and requiring him to give in a new Inventory upon Oath, was answered by *Burroughs*, he might give the Appellant what he pleased rather than oblige him thereto.

Wherefore it is humbly hoped the Decree shall be Reversed,

Sam. Dodd.